

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q64839

Pascal AGIN

Appln. No.: 09/878,269

Group Art Unit: 2616

Confirmation No.: 2987

Examiner: Bob A. PHUNKULH

Filed: June 12, 2001

For: **METHOD OF CONTROLLING TRANSMISSION POWER IN A MOBILE RADIO SYSTEM**

**REQUEST FOR REHEARING UNDER 37 C.F.R. § 41.52(a)(1)**

**MAIL STOP APPEAL BRIEF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In its Decision mailed July 17, 2008, the Board of Patent Appeals and Interferences ("the Board") has affirmed the rejection of claim 45. As will be explained below, it is believed that the affirmation by the Board is based on a misunderstanding of the prior art and how it relates to the claim language.

As correctly pointed out by the Board, the critical language of claim 45 is

**means for applying**, in the event of target value variation, **anticipated variations of at least one of the transmission power** of the data channel, the transmission power of the control channel and the offset of the transmission power of the control channel relative to the transmission power of the data channel, **to obtain an anticipated variation of the data channel transmission power.**

The Board has concluded that Baker satisfies this requirement of claim 45 by satisfying the bold-faced language. The "anticipated variations" asserted by the examiner to be present in

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Baker are the variations to the adjustment step size made by Baker. Appellant asserts that these are not variations to the transmission power. The examiner disagrees, and the Board has agreed with the examiner on this point.

It is believed that a simple example will illustrate the misunderstanding to the Board. Baker discloses a system which monitors transmission power and, when it detects that the transmission power is too low, will adjust the transmission power upwardly. For purposes of discussion, assume that it will adjust upwardly in increments of 50 mw. But if the system sees circumstances at time  $t_1$  that suggest that a large power increase might be needed at time  $t_2$ , it adjusts the adjustment circuit at time  $t_1$  so that, when the next power level reading is made at time  $t_2$  and the power level is detected as too low, the power will be increased at time  $t_2$  by an increment of, e.g., 100 mw instead of 50 mw. The actual adjustment values are not important and are simply chosen by the undersigned to illustrate what is happening in Baker when the step size is adjusted.

The adjustment to the increment size at time  $t_1$  is in anticipation of a need for a significant power increase at time  $t_2$ . However, note that the power is not adjusted at time  $t_1$ . What has happened is that the adjustment circuit has been modified. The transmission power remains exactly the same after the step size adjustment as it was before the step size adjustment. There is no adjustment at all to the transmission power in Baker until at a later time when the power level is actually detected as being too low.

At page 5 of its Decision, the Board refers to appellant's argument that the step sizes are not variations in the transmission power. The comments of the Board suggest that the reason

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appellant has argued that the step sizes are not transmission power variations is that Baker applies multiple increments to adjust the power. But this is not the basis of the argument. The issue has nothing to do with whether there is a single application, as characterized by the Board, but instead the issue is *what is being adjusted*. The anticipatory adjustment at time  $t_1$  is not an adjustment of the transmission power. The power does not change at all at time  $t_1$ , even by one small increment. What has happened is that there has been a modification of how the adjustment circuit will adjust the power level in the future, at time  $t_2$  when an actual power level deficit is detected.

Thus, there are two adjustments in Baker, one at  $t_1$  and another at  $t_2$ . The adjustment at time  $t_1$  is arguably an anticipatory adjustment, but it is not an adjustment of the power level. The adjustment of the power level at time  $t_2$  is indeed an adjustment of the power level, but it is only after the power level has been detected as too low and is therefore not anticipatory.

Accordingly, there is no means for applying anticipated variations of the transmission power.

At page 6 of its Decision, the Board discusses an example in Baker where the power level is adjusted. But the power level adjustment is not made in anticipation of a detected power deficit, it is made after detection of a power deficit. Even the Board in its description notes this (“Baker calculates this adjustment by first determining the difference between the received and targeted power...”).

There are other issues appellant could raise relative to the reasoning in the Decision, but this simple issue is believed dispositive. An adjustment to the step size is not itself an

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adjustment of the power, it is a change in how quickly the power will be adjusted in the future when a power increase is needed. It is a modification of the adjustment circuit, not a modification of the power level. So the step size adjustment in Baker cannot be the claimed “anticipated variation of the transmission power” required by claim 45.

For the above reasons, reconsideration of the Decision and reversal of the examiner are respectfully requested.

Respectfully submitted,

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**23373**  
CUSTOMER NUMBER

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